IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2307 OF 1998

The Ravalgaon Sugar Farm Ltd, a Company incorporated under the provisions of Indian Companies Act, 1913 having its office at Meher Chambers, 3rd Floor, Dr.Sunderlal Behal Path, Ballard Estate, Mumbai 400 038. ...Plaintiffs

Versus

The India Club having its office at Rehem Mansion, 44, Colaba Causeway, Mumbai 400 039. ...Defendants

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Shri S.D.Mogre for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 28, 2007.

ORAL JUDGMENT:

1. The suit is listed under the caption "Undefended Suits for Exparte Decree". The suit is filed by the Plaintiffs for recovery of a sum of Rs.6,99,000/- with interest from the Defendants.

2. The Plaintiffs had applied on 18th November, 1996 for corporate membership of the Defendants for their Chairman and Managing Director and the Chief Executive of the Company. A sum of Rs.6,00,000/- by way of subscription was paid by the Plaintiffs to the Defendants. The Defendants acknowledged of having

received the said amount towards founder corporate membership fee and forwarded the receipt for the said amount alongwith letter dated 04th November, 1996. By letter dated 24th June, 1997 the Plaintiff informed the Defendants that they were not desirous of continuing their membership. The Plaintiffs requested the Defendants to refund a sum of Rs.6,00,000/-. The Defendants responded by letter dated 10th July, 1997 informing the Plaintiffs that their letter will be attended in due course. There were reminders issued on 24th September, 1997 and 16th October, 1997 to the Defendants. The Chairman and Managing Director of the Plaintiffs had a telephonic discussion with Mr.K.K.Khandelwal of the Defendants on 24th July, 1997. According to the case of the Plaintiffs, Shri Khandelwal assured that the amount will be paid in one week.

2. The present suit is filed for recovery of a sum of Rs.6,00,000/- as the Defendants failed and neglected to pay the said amount.

3. The Plaintiffs have tendered on record an Application dated 27th August, 2007 seeking permission to lead secondary evidence of documents at Exhibit C, D and E annexed to the plaint. It is stated that after a diligent search the said documents could not be traced

out. The said Application is marked "X" and is taken on record. The Plaintiffs have also filed a compilation of documents consisting of 12 documents. The compilation is marked "Y" (collectively) for identification and is taken on record. The Plaintiffs have filed an affidavit of one Shri Devendra Somnath Kulkarni, the Factory Manager of the Plaintiffs for proving the claim in the suit.

4. In view of the averments made in the Application tendered today, permission deserves to be granted to the Plaintiff to lead secondary evidence of the documents at Exhibit C, D and E by producing xerox copies thereof.

5. The perusal of the affidavit of Shri Devendra Somnath Kulkarni and perusal of the compilation of documents shows that the payment of a sum of Rs.6,00,000/- to the Defendants has been duly proved by the Plaintiffs. The correspondence made between the parties has been duly proved by the said affidavit. There is no written statement filed by the Defendants. The Plaintiffs have established the liability of the Defendants to pay a sum of Rs.6,00,000/-. The Plaintiffs have claimed interest at the rate of 18% per annum from the date of institution of the suit. Considering the nature of the claim made by the

Plaintiff, further interest at the rate of 6% per annum will have to be allowed.

6. Hence, the suit is decreed in terms of prayer clauses (a) and (b) with a modification that further interest will be payable at the rate of 6% per annum on sum of Rs.6,00,000/- from the date of the institution of the suit till realisation or payment. The Plaintiffs will be entitled to refund of court fees, if any, as per the rules. The Plaintiffs are entitled to take back the original documents after the decree is sealed. Certified copy is expedited.

JUDGE